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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,460	07/08/2003	Jeff Abel	13.001.CON	1046
22147	7590	12/20/2005	EXAMINER	
DAVID R MCKINNEY 8 EAST BROADWAY, SUITE 500 UTAH, UT 84111			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 12/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/616,460	ABEL, JEFF	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J. Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 September 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,4-14,16-18 and 20-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,4-14,16-18 and 20-24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

### **Detailed Action**

#### *Amendment*

1. This office action is in response to applicant's amendment dated 9-6-05 and this action is non-final. Further, entry of applicant's preliminary amendment dated 7-8-03 into the application file is acknowledged.

#### *Claim Objections*

2. Claim 21 is objected to because of the following informalities: it does not end in a period. Appropriate correction is required.

#### *Double Patenting*

3. Claims 1-2, 4-14, 16-18 and 20-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 6-18 of U.S. Patent No. 6,615,532 to Abel. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the identical claim limitations of claims 1-2, 4-14, 16-18 and 20-21 of the present application are found in claims 1-3 and 6-18 of the patent to Abel, where the limitations of claims 1 and 6 of the present application can be found in either of claims 1, 2 or 13 of the patent to Abel, the limitations of claim 2 of the present application can be found

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in claim 13 of the patent to Abel, the limitations of claim 4 of the present application can be found in claim 3 of the patent to Abel, the limitations of claim 5 of the present application can be found in claim 13 of the patent to Abel, the limitations of claim 7 of the present application can be found in claim 6 of the patent to Abel, the limitations of claim 8 of the present application can be found in claim 7 of the patent to Abel, the limitations of claim 9 of the present application can be found in claim 8 of the patent to Abel, the limitations of claim 10 of the present application can be found in claim 9 of the patent to Abel, the limitations of claim 11 of the present application can be found in claim 10 of the patent to Abel, the limitations of claim 12 of the present application can be found in claim 11 of the patent to Abel, the limitations of claim 13 of the present application can be found in claim 12 of the patent to Abel, the limitations of claim 14 of the present application can be found in claim 13 of the patent to Abel, the limitations of claim 16 of the present application can be found in claim 14 of the patent to Abel, the limitations of claim 17 of the present application can be found in claim 15 of the patent to Abel, the limitations of claim 18 of the present application can be found in claim 17 of the patent to Abel, the limitations of claim 20 of the present application can be found in claim 18 of the patent to Abel and the limitations of claim 21 of the present application can be found in claim 16 of the patent to Abel.

Claims 22-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 13 of U.S. Patent No. 6,615,532 to Abel in view of FR Patent No. 2582190.

Referring to claim 22, claim 13 of the Abel patent does disclose the length measuring scale is visible on opposing sides of the net – see for example column 6 lines 42-56. Claim 13 of

the Abel patent does not disclose the net may be used in an inverted configuration with respect to the frame. The French patent does disclose the net – at G, may be used in an inverted configuration with respect to the frame (not shown) – see the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support. Therefore it would have been obvious to one of ordinary skill in the art to take the device of claim 13 of the Abel patent and add the net being used in an inverted configuration with respect to the frame of the French patent, so as to allow for the fish to be housed in the net for easier manipulation of the fish for measurement.

Referring to claim 23, claim 13 of the Abel patent further discloses the length measuring scale and the numeral designations are visible on opposing sides of the net – see for example column 6 lines 42-56. Claim 13 of the Abel patent does not disclose the numeral designations are properly readable when the net is in an inverted configuration with respect to the frame. The French patent does disclose the numeral designations – at C,D, are properly readable when the net is in an inverted configuration with respect to the frame – see for example. The drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support. Therefore it would have been obvious to one of ordinary skill in the art to take the device of claim 13 of the Abel patent and add the net being used in an inverted configuration with respect to the frame of the French patent, so as to allow for the fish to be housed in the net for easier manipulation of the fish for measurement.

Referring to claim 24, claim 13 of the Abel patent does not disclose the standard units of length are selected from the group consisting of English units and metric units. The French patent does disclose the units are selected from the group consisting of English units and metric

units – see for example the drawing figure and the English abstract. Therefore it would have been obvious to one of ordinary skill in the art to take the device of claim 13 of the Abel patent and add the units of measure being either English units or metric units of the French patent, so as to allow for the user to quickly determine the length of the fish during use.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-5, 11, 18, 20 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent No. 2582190.

Referring to claims 1 and 18, the French patent discloses a fish net and method comprising, a frame (not shown), a net – at G, attached to the frame, and a length measuring scale – at A-D, permanently disposed generally linearly on a surface of the net – see the drawing figure, such that a user may determine a size of a fish held in the net by visually comparing the fish with the length measuring scale – see the drawing figure.

Referring to claim 2, the French patent discloses the length measuring scale further includes length markings – at C-D, representing standard units of length, and numeral designations associated with the length markings – see for example the drawing figure.

Referring to claim 4, the French patent discloses the length measuring scale includes length markings representing modified units of length to compensate for curvature of the fish and the length measuring scale – see for example at C and D in the drawing figure.

Referring to claim 5, the French patent discloses the net forms a pocket in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale – see for example – at G in the drawing figure.

Referring to claim 11, the French patent discloses the net material is a mesh and net material – see for example the drawing figure.

Referring to claim 20, the French patent discloses the step of placing the fish within the fish net further comprises causing the fish to rest in a bottom of the net in substantial liner alignment with the length scale – see for example the drawing figure.

Referring to claim 22, the French patent discloses the length measuring scale is visible on opposing sides of the net – see the drawing figure where the length measuring scale – at- A-J, extends from one side to an opposing side of the net – at G, such that the net may be used in an inverted configuration with respect to the frame – see for example the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support.

Referring to claim 23, the French patent discloses the length measuring scale and the numeral designations are visible on opposing sides of the net – see for example the drawing figure where the length measuring scale – at- A-J, extends from one side to an opposing side of the net – at G, and are properly readable when the net is used in an inverted configuration with

respect to the frame – see for example the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support.

Referring to claim 24, the French patent discloses the standard units of length are selected from the group consisting of English units and metric units – see for example the drawing figure and the English abstract.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-7, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 1 above, and further in view of U.S. Patent No. 5,501,026 to Bryant et al.

Referring to claim 6, The French patent further discloses the length measuring scale extends from one side of the net to the other – see the drawing figure. The French patent does not disclose the frame is a substantially closed loop portion having opposing sides. Bryant et al. does disclose the frame further comprises a substantially closed loop portion – at 24, having opposing sides – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the frame being a closed loop of Bryant et al., so as to allow for the net to totally enclose any objects located inside.

Referring to claim 7, the French patent as modified by Bryant et al. further discloses the net further comprising, first and second side pieces with curved edges – see at the sides of item 24 in figure 1 of Bryant et al., a substantially linear center piece – at 22 and the net portion – proximate 34 in figure 2 of Bryant et al., having side edges – see figure 1, the length measuring scale – at 100, being disposed on the center piece – see figure 1, and the side edges of the center piece being connected to the curved edges of the first and second side pieces, forming a pocket in which the animal naturally tends to rest in substantial linear alignment with the length measuring scale – see for example figures 1-3 of Bryant et al.

Referring to claim 10, the French patent as modified by Bryant et al. further disclose the center piece is of a material selected from the group consisting of mesh and net materials – see for example proximate 34 in figure 2 of Bryant et al.

Referring to claim 13, the French patent does not disclose a handle and a substantially closed loop portion attached to the handle, the net being attached to the loop portion. Bryant et al. does disclose a handle – at 22, and a substantially closed loop portion – at 24, attached to the handle – see for example figures 1-3, the net – at 28, being attached to the loop portion – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the handle and loop portion of Bryant et al., so as to allow for the net to be easily handled by the user.

Claims 8-9 rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as modified by Bryant et al. as applied to claim 7 above, and further in view of U.S. Patent No. 2,600,773 to Hungerford.

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Referring to claims 8-9, the French patent as modified by Bryant et al. does not disclose the first and second side pieces and the center piece are made of the same or different materials. Hungerford does disclose the first and second side pieces – at the sides of item 6, and the center piece – at 1 are made of the same or different materials – see for example column 1 lines 46-50 and column 2 lines 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent as modified by Bryant et al. and add the first and second side pieces and the center piece being made of the same or different materials of Hungerford, so as to allow for the device to be made both flexible and durable.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 1 above, and further in view of Caddis Manufacturing, Inc. online catalog (from now on referred to as Caddis). The French patent does not disclose the length measuring scale is disposed on the net by a process selected from the group consisting of weaving into the material of the net, embroidering onto the material of the net, printing on the material of the net, and silk screening onto the material of the net. Caddis does disclose the length measuring scale is disposed on the net by a process selected from the group consisting of weaving into the material of the net, embroidering onto the material of the net, printing on the material of the net, and silk-screening on the material of the net – see for example the pictures of Caddis. Therefore it would have been obvious to one of ordinary skill in the art to take the fish net of the French patent and add the measuring scale disposed on the net from one of the methods described above of Caddis, so as to make the device more durable in that the length scale is permanently attached to the net.

Claims 14, 16-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent in view of Bryant et al.

Referring to claims 14 and 16, the French patent discloses a fish net comprising, a frame (not shown), a net – at G, attached to the frame, and a length measuring scale – at A-D, permanently disposed generally linearly on a surface of the net – see the drawing figure, such that a user may determine a size of a fish held in the net by visually comparing the fish with the length measuring scale – see the drawing figure. The French patent discloses the length measuring scale further includes length markings – at C-D, representing standard units of length, and numeral designations associated with the length markings – see for example the drawing figure. The French patent further discloses the net includes a bottom and the length markings include a zero point – see between items C and D in the drawing figure, near the bottom, with two coordinated scales sharing the zero point – see the drawing figure, and extending in opposing directions therefrom – see for example the drawing figure, whereby a user may visually determine the length of the fish by substantially aligning the fish with the length scale – see for example the drawing figure, and adding the numeral designations which are approximately aligned with opposing ends of the fish – see for example the drawing figure. The French patent further discloses the length measuring scale includes length markings representing modified units of length to compensate for curvature of the fish and the length measuring scale – see for example at C and D in the drawing figure. The French patent further discloses the net forms a pocket in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale – see for example – at G in the drawing figure. The French patent does not disclose a handle and a substantially closed loop portion attached to the handle, the net being attached to the loop portion. Bryant et al. does disclose a handle – at 22, and a substantially closed loop portion – at 24, attached to the handle – see for example figures 1-3, the net – at 28,

being attached to the loop portion – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the handle and loop portion of Bryant et al., so as to allow for the net to be easily handled by the user.

Referring to claim 17, the French patent as modified by Bryant et al. discloses the net material is a mesh and net material – see for example the drawing figure of the French patent and figure 1 of Bryant et al.

Referring to claim 21, the French patent as modified by Bryant et al. further discloses the length markings represent standard units of length – see for example the drawing figure and the English abstract of the French patent and – at 100 in figure 1 of Bryant et al.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
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Art Unit 3643